

activities during periods when the specified operations are not being carried on, where their work is functionally remote from the actual conduct of the operations for which exemption is provided and is unaffected by the natural factors which the Congress relied on as reason for exemption. The courts have recognized these principles. See *Maneja v. Waialua*, 349 U.S. 254; *Mitchell v. Stinson*, 217 F. 2d 210; *Maisonet v. Central Coloso*, 6 Labor Cases (CCH) par. 61,337, 2 WH Cases 753 (D. P.R.); *Abram v. San Joaquin Cotton Oil Co.*, 49 F. Supp. 393 (S.D. Calif.), and *Heaburg v. Independent Oil Mill Inc.*, 46 F. Supp. 751 (W.D. Tenn.). On the other hand, there may be situations where employees performing certain preseason or postseason activities immediately prior or subsequent to carrying on operations named in sections 13(a)(5) or section 13(b)(4) are properly to be considered as employed "in" the named operations because their work is so close in point of time and function to the conduct of the named operations that the employment is, as a practical matter, necessarily and directly a part of carrying on the operation for which exemption was intended. Depending on the facts and circumstances, this may be true, for example, of employees who perform such work as placing boats and other equipment in condition for use at the beginning of the fishing season, and taking the necessary protective measures with respect to such equipment which are required in connection with termination of the named operations at the end of the season. Where such work is integrated with and is required for the actual conduct of the named operations on the specified aquatic forms of life, and is necessarily performed immediately before or immediately after such named operations, the employees performing it may be considered as employed in the named operations, so as to come within the exemption. It should be kept in mind that the relationship between the work of an employee and the named operations which is required for exemption is not necessarily identical with the relationship between such work and the production of goods for commerce which is sufficient to establish its general coverage under the Act. Thus, repair, overhaul,

and reconditioning work during the inactive season which does not come within the exemption is nevertheless closely related and directly essential to the production of goods for commerce which takes place during the active season and, therefore, is subject to the provisions of the Act (*Farmers' Reservoir Co. v. McComb*, 337 U.S. 755; *Mitchell v. Stinson*, 217 F. 2d 210; *Bowie v. Gonzalez*, 117 F. 2d 11; *Weaver v. Pittsburgh Steamship Co.*, 153 F. 2d 597, cert., den., 328 U.S. 858).

§784.114 Application of exemptions on a workweek basis.

The general rule that the unit of time to be used in determining the application of the exemption to an employee is the workweek (see *Overnight Motor Transportation Co. v. Missel*, 316 U.S. 572; *Mitchell v. Stinson*, 217 F. 2d 210; *Mitchell v. Hunt*, 263 F. 2d 913; *Puerto Rico Tobacco Marketing Co-op. Ass'n. v. McComb*, 181 F. 2d 697). Thus, the workweek is the unit of time to be taken as the standard in determining the applicability to an employee of section 13(a)(5) or section 13(b)(4) (*Mitchell v. Stinson*, supra). An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It may begin at an hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted. If in any workweek an employee does only exempt work he is exempt from the wage and hours provisions of the Act during that workweek, irrespective of the nature of his work in any other workweek or workweeks. An employee may thus be exempt in one workweek and not the next (see *Mitchell v. Stinson*, supra). But the burden of effecting segregation between exempt and non-exempt work as between particular workweeks is on the employer (see *Tobin v. Blue Channel Corp.*, 198 F. 2d 245).